APPENDIX

APPENDIX

ELKHART CIRCUIT COURT LETTER OF OPINION

June 6, 1967

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Re: #32391, Pasalich, et al vs. Draskovich, et al (and #32541, Pasalich, et al vs. Draskovich, et al, tried under #32391)

Gentlemen:

I have restudied my rather copious notes taken in the trial of this case and the exhibits introduced in evidence. I have also studied the very able and thorough briefs submitted by counsel, as well as the authorities therein cited. Counsel on both sides are to be complimented for the careful and thorough manner in which they conducted the trial of this case and their exhaustive and careful preparation of final

briefs. Attorneys on both sides have exerted every effort to present their respective theories succinctly and clearly. I approach a decision in this case with a deep sense of humility and a feeling of the great responsibility involved. The litigants all have deep religious convictions and are loyal and patriotic Americans although they trace their immediate ancestry to a foreign land. The question of Communism has been raised during the trial but it is very apparent that not one of those involved would countenance Communism for one minute. I have enjoyed trying this case because of the legal questions involved, the opportunity to learn more about one of the world's great religions, but more importantly because it afforded me the privilege of becoming acquainted with such a fine group of people.

A court, viewing the question involved from an impartial standpoint cannot help but wish that such good people would reconcile their differences and again be one happy church congregation, living together in peace and harmony. They all have the same religious beliefs and convictions. Their only real difference is the question of the defrocking of a bishop. This fate of one man should not break up a happy and peaceful religious congregation here in South Bend, Indiana.

Of course I realize there are charges that the management and actions of the church at Belgrade are influenced by the Communist government of Yugoslavia. It is natural that a church, in order to survive in any country, more especially in a Communist country, must obey the laws of that country—must not openly attack the officials of that country. This does not mean that such church must surrender any of its fundamental beliefs or rights. There is

some evidence in this case that the church in Yugoslavia has participated in some of the formal ceremonies of the Communist government. This would be natural with a church that always had a close link with the government of the country in which it was located, which, by the way, is unknown in the United States. There is also some evidence that some government officials of Yugoslavia have from time to time composed oppresive rules and regulations upon the church there. However, there is no credible evidence that the government of Yugoslavia has taken any part in the decision by the Holy Assembly of Bishops to divide the Serbian Eastern Orthodox Diocese of the United States of North America and Canada into three separate dioceses and to defrock Bishop Dionisije.

In the case at bar it is not the duty of this court to decide whether or not the bishop was justly or unjustly defrocked. This question is purely within the jurisdiction of the church government with headquarters at Belgrade and will not be disturbed by the courts.

We must not lose sight of the fact that the local church is a part of "The Serbian Eastern Orthodox Diocese of the United States of North America and Canada." (See Exhibit "C") The Serbian Orthodox Diocese of the United States of North America and Canada was duly incorporated under the laws of the State of Illinois in 1935 and adopted a constitution (see Exhibit "B") which was approved by the Serbian Orthodox Church of Yugoslavia. This constitution adopts the ecclesiastical and canonical authority and position of the Belgrade church (see Articles 1 and 2) but expressly reserves to itself "full administrative freedom, and accordingly it can independently regulate and rule the activities of its church, school, and other

diocesan institutions and all funds and beneficiaries, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States and Canada." (See Article 3) Thus a new church of the Serbian Orthodox faith was created in the United States and Canada.

The constitution of the Belgrade church (Mother church) (Exhibit "F", Article 15, Paragragh 1) expressly excludes this organization from its regular dioceses but states that "in matters spiritual and hierarchical, to the Serbian Orthodox Church also belong these dioceses which are abroad: 1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or Monastery of St. Sava, in Libertyville, Illinois."

Certainly no authority other than the Illinois corporation, itself, has any right to amend, change, or disregard the constitution of the said Illinois corporation. There is nothing in the world to prevent the Belgrade Church from setting up as many new churches and dioceses in America as it desires, but that does not mean that it can break up and in effect dissolve *the church organization created by the Illinois corporation and take away from it its property.* It follows that these defendants are free to leave their church and to join the new church thus established by Belgrade, if they wish, but they cannot take the church property with them. This church property is an inherent part of The Serbian Orthodox Diocese of the United States of North America and Canada and must remain so unless changed by its authority.

The Holy Assembly of Bishops of the Serbian Patriarchate has the authority to defrock all bishops and to appoint a bishop for this entire diocese, but *it has no authority to appoint a bishop for only a part of the diocese.* In other

words, it has authority to appoint Bishop Firmilian or any other bishop for the diocese of the United States of North America and Canada, *but no authority to break up the diocese into parts.*

The Illinois Corporation established a church wholly independent of the Mother Chuch in Belgrade, retaining the same religious beliefs and practices and granting to the church in Belgrade authority only to appoint its bishop.

The property of the South Bend church is held in various names, as follow: "Serbian St. Peter and Paul Church" (see Exhibit A-2); "Serbian St. Peter and St. Paul Orthodox Church" (see Exhibit B-2); "Serbian Orthodox Church of St. Peter and St. Paul" (see Exhibit L-4); "Serbian Orthodox Saint Peter and Paul Church" (see Exhibit M-4); and "St. Peter and Paul Serbian Church" (see Exhibit N-4). In my humble opinion this real estate is all held in trust for the people of South Bend and vicinity who are of the Serbian Orthodox faith and are loyal to the diocese of the United States of North America and Canada, as governed by the Illinois corporation. (See Exhibit "C", Article 2)

Nothing would be gained by citing and quoting from the legal authorities upon which this opinion is based. Suffice it to say that this Court is of the opinion that the principles announced by the United States Supreme Court in Watson vs. Jones, 13 Wall, 679; 20 Law Ed. 666-1872—are still the law of Indiana, this despite the opinion of Professor Carl Zollman. It is true that some authorities make a distinction between property rights and doctrinal rights, where same can be clearly separated, but the overpowering question in the case at bar is the authority of the central church, the Serbian Orthodox Diocese of the United States of North

America and Canada, over the ecclesiastical affairs of its local churches. The property of its local churches is incidental and follows those who remain true to that church.

The evidence shows that the names of the parties in the plaintiff faction were crossed from the records of membership. It was explained that this was done because their dues had not been paid. There is no evidence that the members of the plaintiff faction have been barred from the church services. Therefore, I do not believe the court would be justified in assessing any penalties against the defendants for contempt of court.

I am going to ask the attorney for the plaintiffs to prepare a decree and submit it to counsel for the defendants and to the court. We will not enter the decree until it can be studied by all concerned and suggestions made for changes or corrections.

Respectfully submitted,

/s/ *Aldo J. Simpson*
Aldo J. Simpson

AJS:lz

IN THE

COURT OF APPEALS OF INDIANA
THIRD DISTRICT

NICK DRASKOVICH, STEVE KASANOVICH, GORDON CHURCHIA, DANIEL GRUBESICH, NICK MEDICH, MIKE UZELAC, DAN RADMAN, WALTER MILOVICH,

Defendants-Appellants,

vs.

NOVAK PASALICH, ADDIE MAKSIMOVICH, MICHAEL PASALICH, LAZAR MAKSIMOVICH, FRED MEDICH, JOHN ZIVKOVICH, MICHAEL PETKOVICH

Plaintiffs-Appellees.

No. 172 A 13

PLAINTIFFS-APPELLEES' PETITION FOR REHEARING EN BANC

Pursuant to Appellate Rule 11 of the Indiana Rules of Procedure, Plaintiffs-Appellees now, and within twenty (20) days from rendition of the Decision of the Third District of this Court herein on March 20, 1972, petition the Court of Appeals for a rehearing en banc, showing as grounds for this petition as follows:

1. The Decision of the Third District of the Court of Appeals of Indiana erroneously decides the following new questions of law:

A. In holding and finding that all organic instruments of "hierarchical" church organizations or religious societies constitute part of the polity

or articles of church government in respect to spiritual, sacramental, and canonical matters; that such organic instruments are therefore sources of spiritual or religious doctrine as well as of the tenets of the faith; and therefore are for all purposes ecclesiastical instruments the construction and application of which require theological expertise; by reason of which it is therefore decided erroneously as a new question of law in the State of Indiana that none of such organic structural instruments, nor any relevant parts thereof, are secular documents, all of which ultimately results in a holding that in resolving property disputes within church organizations there are no neutral principles of law available for the interpretation, construction and application of such organic instruments.

B. In holding and finding, contrary to the overwhelming weight of the evidence in this cause, that the purported decision of the Belgrade Church organizationally to alter the structure of the American-Canadian Diocese of the Serbian Eastern Orthodox Church constituted a subdivision or reorganization, when in fact as is undisputed on the record it constituted an attempt to dissolve or abolish the American-Canadian Diocese and to create in its stead three new dioceses, the purported dissolution being plainly beyond any arguable powers of the Belgrade Church by application of neutral principles of law to the organic church instruments and the creation of three new dioceses being arguably within the prerogatives of the Belgrade Church, but, apart from the attempted substitution of the latter for the former, this is a matter which is neither in dispute here nor germane to the justiciable issues that are in dispute.

C. In holding and finding, contrary to the overwhelming weight of the evidence, that the purported dissolution or abolition of the American-Canadian Diocese by the Belgrade Church constituted the effectuation of an ecclesiastical, hierarchical, spiritual, canonical or doctrinal decision affecting the tenets of the faith of the Serbian Eastern Orthodox Church and was not a purported attempt to effectuate an administrative decision as to which the Belgrade Church had in its Constitution preserved no authority, jurisdiction or power.

D. In holding and finding that the powers preserved unto the Belgrade Church in respect to administrative matters affecting dioceses geographically within the national borders of the State of Yugoslavia applied also to affiliate dioceses outside those borders, in clear contravention of the plain meaning of the words employed in the organic church instruments here involved, including particularly the Constitution of the Belgrade Church and the Constitution of the American-Canadian Diocese, all of which is readily determinable by neutral principles of law and none of which transgresses in any way values embodied in the First Clause of the First Amendment to the Constitution of the United States of America.

E. In failing to distinguish between what are identified in the record as "Article 14 Dioceses" and "Article 15 Dioceses" when applying the jurisdictional powers preserved unto the Belgrade Church by Article 16 of the Constitution of the Belgrade Church.

2. The Decision of the Third District of the Court of Appeals of Indiana contravenes ruling precedent of the Supreme Court of Indiana on each and all the following points as stated in each and all the following cases:

A. In determining the sufficiency of the evidence to support the Trial Court judgment the Reviewing Court on appeal does not weigh the evidence, does not resolve credibility conflicts, and reverses on grounds of sufficiency of evidence only when the evidence is without dispute and entitles the party against whom judgment was entered below to a judgment as a mattter of law:

Hinds v. *McNair* (1955), 235 Ind. 34, 129 N.E. 2d 553;
Pokraka v. *Lummas Co.* (1952), 230 Ind. 523, 104 N.E.2d 669; and
Allison v. *Boles* (1967), 141 Ind. App. 592, 230 N.E.2d 784,

the breach of which principles occur here in the manner in which the Third District implicitly finds that the Trial Court erred in its conclusion, based on conflicting evidence that clearly preponderated in favor of the Trial Court's resolution thereof, that the Belgrade edict constituted an attempt to *dissolve* or *abolish* the American-Canadian Diocese and that determination of diocesan boundaries is as to dioceses geographically outside the State of Yugoslavia an administrative matter and not one involving the tenets of the faith of the Serbian Eastern Orthodox Church, and thus is not as to such non-territorial dioceses within the powers preserved unto the Belgrade Church by its Constitution nor conferred upon it by the Constitution of the American-Canadian Diocese.

B. In property disputes or any other controversies involving religious societies or church organizations generally, neutral principles of law apply, which ruling precedent is established in the decision of the Supreme Court of Indiana in the following case:

3. There is an irreconcilable conflict between the decision of the Third District of the Court of Appeals of Indiana in this case and the decision of Division One of its predecessor court, the Appellate Court of Indiana, as enunciated in *United Methodist Church in the United States* v. *St. Louis Crossing Independent Methodist Church* (Ind. App., 1971), 276 N.E.2d 916, in that in the Appellate Court case the ruling precedents of the Supreme Court of Indiana and of the Supreme Court of the United States are discerned and properly followed, particularly on the issue of application of neutral principles of law, whereas in the instant case, as noted in Parts 1A., B., C., D. and E., above, the decision of the Third District concludes that in respect to church organizations classified as "hierarchical" as to spiritual or doctrinal matters there are no circumstances in which neutral principles of law can apply, which conflict also exists as between the decision of the Third District in the instant case and the decision of the Appellate Court of Indiana in *Merryman* v. *Price* (Ind. App., 1970), 259 N.E.2d 883.

4. The decision of the Third District of the Court of Appeals of Indiana in this case fails to give a statement in writing and instead merely states unreasoned conclusions as to the following disputed substantial questions arising on the record, argued by the parties, and as to which a *decision* was required:

> A. That the pretended edict of the Belgrade Church affecting the internal administration of the American-Canadian Diocese constituted a dissolution or abolition of the American-Canadian Diocese and not a purported subdivision only.

B. That the pretended edict of the Belgrade Church constituted interference in administrative matters, as opposed to ecclesiastical-hierarchical matters in the sense of interpretation and application of the canons or tenets of the faith, the former of which was in no way preserved unto the Belgrade Church nor conferred upon it by the American-Canadian Diocese and the latter of which, while in fact preserved unto the Belgrade Church, constitutes no part of the instant controversy.

Wherefore, Plaintiffs-Appellees respectfully pray for a rehearing by the Court of Appeals of Indiana and, because of the conflicts between the decision of the First District in the instant case and those announced by the Supreme Court of Indiana as well as those announced by this Court's predecessor, the Appellate Court of Indiana, respectfully suggest that such rehearing be held by the Court en banc; and Plaintiffs-Appellees respectfully pray that upon rehearing the Opinion of the Third District herein be withdrawn and the Decision vacated; and that the judgment of the Elkhart Circuit Court be thereafter in all things affirmed.

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Attorney For Plaintiffs-Appellees

IN THE SUPREME COURT OF ONTARIO

The Honorable Mr. Justice Wilson
Tuesday, the 20th day of April, A.D. 1965

Between:

Petar Mirkovich; Savo Tanjurdzich; George Bulat; Dusan Macesic; Zika Jovanovich; on behalf of themselves and all the other members of St. George Serbian Orthodox Church-School Congregation of Niagara Falls, an unincorporated association, being a component part of the Serbian Eastern Orthodox Diocese of the United States and Canada,

Plaintiffs

—and—

Rade Bozanich; Bosko Raseta; Predrag Zekavica; Nada Jovetich; Ilija Jovetich; Jovo Surla; George Sainovich; Ljubomir Stojanovic;

Defendants

JUDGMENT

This Action coming on for trial on the 12th day of April, A.D. 1965, and continuing on the 13th, 14th and 15th days of April, at the sittings holden at Welland for the trial of actions without a jury, in the presence of Counsel for all parties, and upon hearing read the pleadings and hearing read the statement of admissions as to fact, and the Exhibits, and on hearing the evidence adduced, and what was alleged by Counsel aforesaid, this Court was pleased to direct this action to stand over for Judgment, and the same coming on this day for Judgment.

1. This Court Doth Declare that the lands and premises as set out in Paragraph "6" of the Statement of Claim, are held by Trustees for and on behalf of St. George Serbian Orthodox Church-School in the City of Niagara Falls as represented by the Plaintiffs and doth order and adjudge the same accordingly.

2. And This Court Doth Further Declare that the Officers and Administrative Board, as elected at the Annual Meeting on December 8th, A.D. 1963, were the duly elected Administrative Board and Officers of St. George Serbian Orthodox Church-School for the year 1964, and doth order and adjudge the same accordingly.

3. And This Court Doth Further Order And Adjudge that the Defendants and those whom they represent, and their agents be and are hereby restrained from, in any way interfering with the use and enjoyment by the Plaintiffs, and those whom they represent, of the said lands and premises as set out in Paragraph "6" of the Statement of Claim, and that the Defendants and those whom they represent, and their agents, be and are hereby restrained from entering on or using the said lands and premises as set out in Paragraph "6" of the Statement of Claim, unless they conform to the orders of the said Officers and Administrative Board of St. George Serbian Orthodox Church-School and their lawful successors.

4. And This Court Doth Further Order And Adjudge that the Defendant Ljubomir Stojanovic be and he is hereby restrained from representing himself as the Priest of St. George Serbian Orthodox Church-School, and that the said Defendant be and is hereby restrained from, in any way, interfering with the activities of the St. George Serbian Orthodox Church-School Congregation.

5. And this Court Doth Further Order And Adjudge that the Defendant Ljubomir Stojanovic deliver up forthwith to the Plaintiffs all the Church-School property and sacred articles belonging to St. George Serbian Orthodox Church-School which may be in his possession, or under his control.

6. And This Court Doth Further Order And Adjudge that the Defendants do pay to the Plaintiffs their costs of this action and their costs of the Motion for Injunction made before Mr. Justice Schats, forthwith after taxation thereof.

7. And This Court Doth Further Order And Adjudge that the Counter-Claim of the Defendants be and the same is hereby dismissed.

8. And This Court Doth Further Order And Adjudge that the Defendants do pay to the Plaintiffs their costs of the counter-claim forthwith after taxation thereof.

Judgment Signed this 9th day of September A.D. 1965.

"P. Brown" (seal)
Deputy Local Registrar

Entered in J.B.
at Folio 287
On September 9, 1965
at Welland Ont.
P.B.

REASONS FOR JUDGMENT

His Lordship: This action is a contest between two groups in the St. George Serbian Orthodox Church School Congregation for possession and control of the congregation's real and personal property.

The plaintiffs were elected officers of the congregation at the Annual Meeting held on December 8, 1963, and they sue on behalf of themselves and all other members of the congregation.

The defendants were elected at a meeting of the congregation called and held on January 19, 1964, which meeting declared the December meeting to be null and void. In their counterclaim the defendants seek possession and control of all the church property.

To understand the rival claims it is necessary to give an historical account, not only relating to the congregation, but to development of the Serbian Ohthodox Church of Belgrade, Yugoslavia, in North America. The church is an ancient religious body of an hierarchical nature. It is headed by a Patriarch, under whom are a Holy Assembly of Bishops, a Holy Synod of Bishops, a Supreme Ecclesiastical Court, Patriarchical Council and Executive, Diocesan Bishops, Diocesan Ecclesiastical Courts, Councils and Executive Committees. Then there are Rectors, the Church Congregational Councils and Church Congregational Executive Committees. The church has a written Constitution, the 1957 edition of which was before me as Exhibit "B" to an agreed statement of facts, filed at the opening of the trial.

In North America there was no organized diocese of the church in 1913. Between that year and 1927 there existed several independent congregations of Serbian people, who first united under the Russian Orthodox Church, although the Serbian Orthodox Church did supply some of the priests to these congregations.

In 1927 a Bishop Mardary called together the first sabor (convention of laymen and clergymen) in Detroit, Michigan. On that occasion the meeting drew up and adopted a Constitution which created the Serbian Orthodox Diocese in the United States of North America and Canada (in paragraph 2 of the statement of facts called the Serbian Eastern Orthodox Diocese for the United States of America and Canada) Exhibit "A" to the statement of facts.

On December 1, 1928, this Constitution was approved by the Holy Bishops Synod of the Serbian Orthodox Church at Belgrade, constituting official approval of the Constitution for the Diocese. It should be pointed out that the church's constitution regulated all of the other dioceses into which the church was divided, but it did not regulate the affairs of the North American Diocese in its temporal aspects. By Article 1 of the Diocesan Constitution it is declared that the diocese is considered ecclesiastically judicially as an organic part of the Serbian patriarchate and enjoys all the benefits which originate therefrom.

By Article 2, all statutes and rules which regulate the ecclesiastical-canonical authority and the position of the Serbian Orthodox Church in Yugoslavia are also compulsory for the diocese, with exceptions which need not be noted.

By Article 3 the diocesan jurisdiction "includes the entire political territory of the United States of America and Canada, which, as such, by its geographical location, enjoys

full administrative freedom, and accordingly it can independently regulate and rule the activities of its church school and other diocesan institutions and all funds and beneficiencies through its organs but in accordance with the laws of this Constitution and in agreement with the laws of the United States of America."

By Article 8: "the diocesan authorities decide independently on all matters within their jurisdiction and in accordance with this Constitution so that the protection of the civil authorities cannot be sought against their decisions except if same conflicts with the laws of the United States and Canada."

Heading the diocese is the Diocesan Bishop, who is appointed by the Holy Assembly of Bishops in Belgrade (Article 9). He is obliged to recognize the head of the Serbian Patriarahate and he is not to make any changes or innovations in the established order of work of the church without prior agreement with the Patriarchate (Article 12).

On May 15, 1935, the diocese was incorporated under the name Serbian Eastern Orthodox Diocese for the United States of America and Canada at Lake County, Illinois, as a religious corporation pursuant to the Corporations Act of the State of Illinois. The incorporators were Bishop Mardary, who by this time was bishop of the diocese, and seven other trustees, lay and ecclesiastical.

For the defendants it was contended that both the spiritual and temporal aspects of the diocese were incorporated, but I find, on the basis of the evidence given by Mr. Fisher, a duly qualified attorney from the State of Illinois, that only the temporal aspects were incorporated.

In 1940 Bishop Dionisije became the bishop of the diocese. In 1953 the Serbians in Niagara Falls, Ontario, formed St. George's Serbian Orthodox Church School Congregation as an unincorporated body. On July 30, 1957, it acquired the real property now the subject matter of the dispute, by a deed to Pane Yerich et al. "as Trustees for the St. George Serbian Orthodox Church of Niagara Falls."

On February 9, 1958, the congregation adopted the by-laws governing its operation (Exhibit "H"). By Article 3 it is declared to be a "component part of the Serbian Orthodox Diocese for the United States of America and Canada, and as such will strictly adhere to all provisions of the Diocesan Constitution, church canons and other rules and orders provided by the diocesan authorities."

By Article 4 "The aim and purpose of the Serbian Orthodox Church Congregation 'Saint George' in Niagara Falls, Ontario, is to maintain and advance the church school and all other institutions beneficial for the spirit of Serbian Orthodoxy. . . ."

According to Article 7 "every newly accepted member of the church congregation is obliged to take an oath of obedience to all regulations provided by this by-law and by the constitution of the diocese as well as all rules and orders of the diocesan authorities." This Constitution was approved by the Diocesan Bishop on December 25, 1958.

On February 13 and May 25, 1962, the Church Peoples' Council of the Diocese requested the Holy Council of Bishops in Belgrade "in view of largeness and spaciousness of this diocese" to elect for the diocese more bishops. On February 7, 1963, the Diocesan Council decided to summon a meeting of the Church National Assembly, its main legislative body, to meet on October 15, 16 and 17 next. On April

17 the Diocesan Executive Board also decided to summon this meeting. Presumably it is the channel through which the Diocesan Council acts for such a purpose.

On May 10, 1963, the Holy Council of Bishops in Belgrade acknowledged requests from the Church People's Council of the American-Canadian Diocese and American-Canadian Bishop Dionisije for more bishops made on February 13, 1962, and again on May 25, 1962. Instead of granting this request, the Holy Council of Bishops, acting under section 16 of the Constitution of the Serbian Orthodox Church, formed three dioceses one of which was (3) a mid-eastern Canadian-American Diocese with the see in Detroit, in which was included the parishes . . . in Canada. The decision went on to provide that "as soon as the newly-formed dioceses obtain their bishops the necessary diocesan bodies and organs will be formed immediately. The final delimitation of the newly organized dioceses and the adjustment of the existing church by-laws to the newly created situation and all other questions pertaining to the church organization of those dioceses will be studied by the juridical bishops (Belgrade) and the Church People's Council and the Holy Assembly of Bishops will pass final judgment on these proposals."

On the same day the Holy Assembly of Bishops in Belgrade suspended Bishop Dionisije from priestly functions and directed him to relinquish the government for the Serbian Eastern Orthodox Diocese for the United States of America and Canada to Bishop Firmilian, who had been newly appointed Administrator in May, 1963. After receiving the above decision of the Holy Assembly of Bishops, the meeting of the Church National Assembly in the United States was advanced to August 6, 7, 8 and 9, 1963.

On May 17 the Holy Assembly of Bishops elected Bishop Stefan as bishop of the Middle-Eastern American Diocese. He succeeded the Administrator Firmilian, who was appointed bishop of the Middle-Western American Diocese. For some years prior to their elevation to the position of bishop, both these men had been priests in the Serbian Eastern Orthodox Church Diocese for the United States of America and Canada.

On June 2 at the regular meeting of the St. George Congregation, a letter from Bishop Dionisije was read calling the Church People's Conference in October. While this was being discussed there was an interruption during which was read a letter from the Holy Synod of the Serbian Orthodox Church in Belgrade, advising the Congregation of the reorganization ordered on May 10 and of the temporary suspension of Bishop Dionisije until the final decision of the Church Court, and that the administration of the Diocese had been confided to Bishop Firmilian. The minute also records:

> "Holy Serbian Orthodox Church appeals to all of us to obey this decision and listen to the voice of the Mother Church."

In another minute there appears the following:

> "To this report no commentary is necessary but it was accepted as known for execution."

A still later minute records:

> "Afterwards the letter of Bishop Dionisije was read in connection with the letter of the Holy Synod. In this letter Bishop Dionisije does not recognize the separation of the present Diocese, nor the punishment told, or suspension of clerical duties until it will be proved that he is guilty. He invites all the Serbs of America and Canada to refuse the decision of the Holy Synod as unjust and uncanonical."

On July 23 at an Extraordinary Meeting of the Congregation a letter was read from Bishop Stefan advising the congregation not to send delegates to the August meeting on the ground that it was called for by irresponsible persons and therefore illegal. The following minute was made on this occasion:

> "Members of this Congregation at the meeting of 2nd June, 1963, accepted the decisions of the Holy Synod of the Serbian Orthodox Church, and accused and condemned the separatist action of the suspended Bishop Mr. Dionisije, so the act of Bishop Mr. Stefan has been acknowledged, and advice accepted not to send delegates to the aforementioned conference."

On August 8 the Church National Assembly passed a resolution declaring the divisions of the Diocese into three dioceses unlawful, unconstitutional and void, and refusing to recognize the suspension of Bishop Dionisije, and the appointment of Bishop Stefan as Bishop.

At the regular meeting of the congregation on October 6 problems arising out of the actions by the Church National Assembly were discussed, with the result that the Congregation decided a Special Meeting would be called at which a vote would be taken to decide whether to accept the decisions of the Holy Synod, namely of the Patriarch, or not. The meeting also voted confidence in the local Priest, Father Stojanovic.

On October 28 the congregation executive sent to all members a notice of a Special Meeting for November 17, with the following agenda:

> "1. Do you recognize decisions of the Synod, namely Patriarchate of Serbian Orthodox Church, or do you not? We beg your participation at this very important meeting."

On November 3 the congregation held its regular Congregational Meeting, and set the date for the Annual Meeting, namely December 8, 1963.

On November 17 at the Special Meeting sixty-five out of a total of one hundred and twenty full-fledged members attended. Sixty-three voted for the question, namely that they recognized the decisions of the Holy Synod. Two members abstained.

> "According to this, this Church remains in unison with the Patriarchate of Serbian Orthodox Church."

On November 23 the Executive Committee sent out to members of the congregation the notice of the Annual Meeting for December 8. The agenda was stated to include:

> "4. Election of the new executive for the following year.
>
> "5. Election of Trustees."

On December 8 this meeting was attended by seventy-seven members: officers and the Administrative Board were elected. The plaintiffs were elected members of the Board.

On January 21, 1964, Bishop Stefan wrote to the St. George Congregation reciting the activities of Father Stojanovic in supporting Bishop Dionisije and forbidding him temporarily to perform clerical duties, on grounds of paragraphs 219 and 221 of the Constitution of the Serbian Orthodox Church, and paragraph 210 procedures from the courts of the Serbian Orthodox Church (Belgrade)

> "as he with his clerical guilty behaviour and stepping on clerical oath, and provoked shock in the people and is not an example to the clerical profession",

and on other grounds. The letter also informed the congregation of the names of two of the clergy to perform the local priest's duties.

On January 19 a letter was written to Father Stojanovic by the President and Secretary of the Congregation, as follows:

> "On the 19th day of January, 1964, immediately following the Holy Liturgy an announcement was made by you to the congregation in attendance, stating that you do not recognize the Board of Executives of the Parish of St. George Serbian Orthodox Church, as elected at the regular Annual Meeeting according to our Parish By-Laws, on the 8th day of December, 1963.
>
> "The Board of Executives considered your action as outlined above, and made this decision: that with this, your action, you voluntarily ceased to be our Parish Priest commencing with the 19th day of January, 1964.
>
> "According to Article 40 of our Church By-laws, you will return to the Board of Executives all church vestments and articles sacred and non-sacred, including all church books."

On February 21, 1964, the President of the Congregation's Administrative Board wrote to Father Stojanovic advising him that he and those who purport to follow him have no right of entry to the church premises, which will be locked and not available to them. The letter also requests the return of church property listed in the letter.

On March 17, 1964, the plaintiffs commenced this action. At the same time they served a Notice of Motion returnable on April 27, for an injunction prohibiting the defendants and those whom they represent from entering upon and using the church lands and premises. On the return of the motion the parties agreed that, pending the disposition of the action and without prejudice to the rights of the parties to it, the members of the congregation as represented by

the plaintiffs and defendants would each hold separate services within the church building until further order of the Court, or the disposition of the action.

At the trial at Welland the parties agreed to the facts set forth in an agreed statement, and the exhibits to which the statement refers. The only exception to this was the calling of Mr. Henry D. Fisher, an Attorney-at-Law from Waukegan, Illinois, to prove the law of that State relevant to this action. He gave it as his opinion that the incorporation of the Diocese under the Religious Corporations Act of that State was an incorporation of the temporal aspects, and not of the ecclesiastical aspects of the Diocese. Insofar as this action is concerned, the parties are agreed that the St. George Church real and personal property belongs to the local congregation, and not to the Illinois corporation, or to the Church in Belgrade.

Much time was devoted to a review of the Constitution of the Mother Church in Belgrade and the Constitution of the Diocese, with the object on behalf of the plaintiffs of establishing that by the action taken by the Diocese in declaring itself autonomous and in refusing to acknowledge the removal of Bishop Dionisije, and by the congregation in adhering to the Mother Church, they are entitled to the relief asked in this action.

On behalf of the defendants it is contended that the congregation ought to take its direction from the Diocesan officials as they did before the breach with Belgrade. Consequently, they are entitled to succeed upon the counterclaim.

However, I think it is unnecessary to go into many questions argued before me. It is important to bear in mind the claims made on behalf of the plaintiffs, and those made by the defendants in their counterclaim. The plaintiffs ask

(a) for an order declaring that the church lands and premises are held by the Trustees for and on behalf of St. George Serbian Orthodox Church School, as represented by the plaintiffs, and other members loyal to the established Patriarchate of the Church.

(b) an order declaring that the officers and Administrative Board as elected at the Annual Meeting on December 8, 1963, are the duly elected Administrative Board and officers of St. George Serbian Orthodox Church School.

(c) for an injunction restraining or prohibiting the defendants and those whom they represent and their agents from entering upon or using the church lands or in any way interfering with the use and enjoyment of them by the plaintiffs and those whom they represent.

(d) an injunction restraining Father Stojanovic from representing himself as a Priest of the congregation and from interfering in any manner with the activities of the Church School and for a mandatory injunction directing him to comply with the order of Bishop Stefan dated January 21, 1964, and specifically to deliver all the Church School property and sacred articles as required by the said order.

The defendants in their counterclaim ask (a) an order declaring that the lands and premises are held by Trustees for and on behalf of St. George Serbian Orthodox Church School Congregation as represented by them.

(b) an order declaring that the officers and Administrative Board elected at the meeting on January 19, 1964, are the duly elected officers and Administrative Board of the Congregation.

(c) for an injunction restraining or prohibiting the defendants by counterclaim and those whom they represent from entering on or using the church lands and premises or in any way interfering with the use and enjoyment thereof by the plaintiffs by counterclaim and those whom they represent.

(d) an injunction restraining Rev. Zarko Mitrovic, a member of the Church School Congregation, from representing himself as its Priest.

The plaintiffs and those whom they represent are those who adhere to the Mother Church in Belgrade and its dogmas. The defendants are those who support the decision of the Diocese to refuse to accept the action of the Belgrade authorities in suspending Bishop Dionisije, who was divested of his episcopal and monastic ranks, removed from the roll of the hierarchy of the Serbian Orthodox Church and returned to his status as a layman by a judgment of the Holy Episcopal Council of the Serbian Orthodox Church at Belgrade on March 15, 1964.

On behalf of the defendants it was admitted that Bishop Dionisije could be dismissed, and I find that he was dismissed following the suspension properly imposed upon him. However, it is contended nevertheless that the admitted membership of the Congregation in the Diocese requires it to take its direction from the Executive of the Diocese. It is contended that notwithstanding the temporary and physical breaking away from the Church in Belgrade, there has been no departure from the Patriarchate in Belgrade.

Before dealing with this particular aspect of the case I shall deal with the counterclaim which may be disposed of very quickly. The evidence establishes quite clearly that

the purported election of officers and Administrative Board on January 19, 1964, was in fact a nullity. It was called without proper notice to the members of the Congregation, given on the morning of January 19, and held on the evening of the same day. No provision of the Congregation's By-laws relative to holding such a meeting was observed. The only officers and Board properly elected in accordance with the By-laws were those elected at the Annual Meeting on December 8, 1963. It follows that an injunction should not issue as asked in paragraphs (c) and (d) of the counterclaim supra. It also follows that the Trustees who were properly elected by the congregation at its proper meeting are the Trustees of the church property.

I have come to the conclusion that the action of the congregation in affirming its allegiance to the Patriarchate acted properly in the circumstances. The Diocesan Constitution adopted when the Diocese was organized in 1927 expressly provided in Article 1 that the Diocese is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate from it.

By Article 2 all statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of America and Canada, with the exception of specific cases which must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles.

By Article 3 the Diocese enjoyed full administrative freedom, and accordingly it was given power independently to regulate and rule the activities of its church school and other diocesan institutions and all funds and beneficiencies through its organs.

By Article 4 every Serbian Orthodox Church School Congregation was required to be in ecclesiastical-canonical bond with the diocese and recognize its authority and power.

Later the Constitution makes provision, in Article 153, which says: "The Church School Congregation property is all that property without exception acquired by individual congregations with their material means." This is in accordance with the admission made at the beginning of the trial, that the church property belongs to the congregation. However, the Diocesan Bishop (in this case Bishop Dionisije) by Article 12 of the Diocesan Constitution was obliged to recognize the head of the Serbian Patriarchate in Belgrade, and "he shall not make any changes or innovations in the established order and work of the church without prior agreement with him."

> "Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review all regulations which may be issued by any diocesan authority, which shall, if they touch upon the sphere of the internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority."

By Article 23 the Diocesan Church National Assembly decides on changes and amendments to the Constitution with the approval of the Holy Bishops' Assembly of the Serbian Patriarchate.

It is quite clear in this case that, at the meeting held in August, 1963, the Church National Assembly went far beyond its powers and acted quite improperly in resolving:

> "1. The Serbian Orthodox Diocese in the United States of North America and Canada be and the same is hereby reformed to be completely autonomous in its administrative temporal and canonical and hierar-

> chical affairs and free from all rules, regulations, orders, decrees or obstructions emanating from the captivity of the Patriarch of the Serbian Orthodox Church and Holy Synod of Bishops."

It also passed many other resolutions amending various Articles of the Constitution as set out in Exhibit "G" to the statement of facts. None of these amendments, of course, could be made without the approval of the Holy Bishops' Assembly. Consequently, the Constitution as it appears in Exhibit "A" to the statement of facts appears to be still in force.

The real conflict between the diocesan authorities and the authorities in Belgrade seems to arise out of the actions of the Holy Council of Bishops on May 10 already referred to. It is apparent, therefore, that Bishop Dionisije, in calling together the Church National Assembly, and in persuading the body to take the action it did, committed offenses against the church, and that these resulted in his removal as a bishop. Consequently, he has no status to rule the diocese or to demand obedience to him from the St. George Congregation. It is impossible, therefore, to hold that the defendants are the proper persons to obtain the relief which they ask in the counterclaim, as being the true followers of the Mother Church in Belgrade.

On behalf of the plaintiffs it was contended that the following three principles should be applied in this case: (1) Courts are reluctant to interfere with the government of ecclesiastical bodies; (2) Courts generally speaking only interfere when property or civil rights are in issue (e.g. use of church property); (3) Where a schism occurs and there is dispute between two factions as to the use of church property, the Court must inquire what was the true identity of the church before the schism, and it will uphold the

rights of those members who still owe allegience to the true church.

Many cases were cited by counsel in support of their respective arguments. In most the Courts were called upon to decide whether or not the terms upon which property had been conveyed to a congregation or its trustees had been violated. In others a minority group in a whole church or a congregation contended that the church had departed from its original constitution. Of the latter type of case, *Dorland* v. *Jones* (1885) 12 O.A.R. 543, affirmed 14 S.C.R. 39 sub nom. *Jones* v. *Dorland,* is a good example. Haggerty, C.J.O. reviewed many authorities including *Watson* v. *Jones,* 13 Wallace 379, a decision of the Supreme Court of the United States, from which I shall soon quote with approval a relevant portion. At page 555 Chief Justice Haggerty had this to say:

> "Their own constitution (i.e. the Church's) seems to afford ample means, by the final authority of the Yearly Meetings, to adjust and regulate such matters (as those in dispute). As far as I can ascertain, this society especially aims to regulate and settle its internal disputes without recourse to outside tribunals."

At page 557 Burton, J. A. said:

> "The Yearly Meeting when once established has final and controlling jurisdiction, as I understand it, in all matters of faith, religious duty, administration and discipline over all subordinate meetings within its territorial limits, and is regarded as having a co-ordinate supreme jurisdiction with other Yearly Meetings, the whole forming the ecclesiastical system known as the Society of Friends."

In the Supreme Court of Canada Ritchie C. J. said at page 43:

> "The attempt to set up a separate quarterly meeting at Pickering, ignoring the yearly meeting regularly

> appointed to meet the following year at Norwich, and not in the regular order of the Society, was so far as I can understand the case, wholly unwarranted and contrary to the discipline and usage, and therefore irregular and void, not having been formed according to discipline, but 'to avoid the rightful authority and controlling action' of the Yearly Meeting to which they were 'subordinate', and in doing so the defendants put themselves out of the society and so ceased to be in unity with the Society of Friends, and therefore cannot properly claim to be the Westlake Monthly Meeting for whose use and benefit this property was purchased.
>
> "I therefore think that the plaintiffs are the persons who now truly and lawfully answer the description of The Westlake Monthly Meeting of Friends, and as such represent the real Westlake Monthly Meeting (Congregation) which is really the only point in controversy."

This case was approved and in effect followed in *Forler* -v- *Brenner* (1922) 21 Ontario Weekly Notes, 489. Although the facts were quite different I think it is reasonable to conclude that those who breach a church constitution cannot expect courts to support them in disputes concerning rights to property. That is the position of Bishop Dionisije and those who support him in this case, as the facts already stated clearly show.

The dispute in *Watson* -v- *Jones* (1871) Supreme Court 13 Wallace, 679 was similar to that in the present case. It concerned two factions in the congregation of Walnut Street Presbyterian Church in Louisville, Kentucky, and arose during the Civil War between the North and the South. The General Assembly of the Church had declared in favour of the abolition of slavery and the majority of the members of the

congregation supported this decision. A smaller group declared adherence to "a Declaration and Testimony against the erroneous and heretical doctrines and practices which have obtained and been propagated in the Presbyterian Church of the United States during the last five years." This Declaration, adopted by the Presbytery of Louisville, under whose immediate jurisdiction was the Walnut Street Congregation, denounced in severest terms the action of the General Assembly in the matters just mentioned, declared an intention to refused to be governed by that action, and invited the co-operation of all members of the Presbyterian Church who shared the sentiments of the Declaration, in a concerted resistance to what they called 'the usurpation of authority' by the General Assembly, the top governing body of the Church.

I adopt the conclusion in that case as expressed at page 734 except that for the word "appellants" must read here "defendants."

> "Whatever may have been the case before the Kentucky Court, the appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. . . ."

The decision was that the appellants had no right to the property or to the use of it.

Mr. Justice Miller in delivering the judgment of the Supreme Court of the United States, earlier at page 726, after classifying the questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, and classifying them under three general heads which do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State, said this:

> "But the third of these classes of cases is the one which is oftenest found in the Courts and which with reference to the number and difficulty of questions involved and to other considerations is every way the most important.
>
> "It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself a part of a large and general organization of some religious denomination with which it is more or less intimately connected by religious views and ecclesiastical government.
>
> "The case before us is one of this class growing out of a schism which has divided the congregation and its officers, and the "Presbytery and Synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted for ever by the instrument which conveyed it, or any specific declaration of its owner to the support of any special religious dogmas, or to any particular form of worship, but of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, is entitled to the use of the property. In the case of an independent congregation we have

pointed out how this identity or succession is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a larger church and more important religious organization, and is under its government and control, and is bound by its orders and judgments.

"There are in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the Session or local church, the Synod over the Presbytery, and the General Assembly over all. These are called, in the language of church organs, 'judicatories' and they entertain appeals from decisions of those below, and prescribe corrective measures in other cases.

"In this class of cases we think the rule of action which should govern the civil courts founded in a broad and sound view of the relations of Church and State under our system of laws, and supported by a preponderating weight of judicial authority, is that whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

For the reasons given, the plaintiffs will have judgment (as endorsed on the record and recorded in my notebook No. 39 at page 388) with the following addition: "The plaintiffs will also have the costs of the motions made before Mr. Justice Schatz."

CERTIFIED CORRECT:

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Chartered Shorthand Reporter,
Official Reporter, S.C.O.